

Case M:07-cv-01127-SI Document 628 Filed 05/21/08 Page 1 of 6

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Defendants' Liaison Counsel

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

IN RE: TFT-LCD (FLAT PANEL)
 ANTITRUST LITIGATION

Master File No. M:07-1827-SI
 MDL No. 1827

This Document Relates To:

ALL ACTIONS

**JOINT RECOMMENDATION AND
 [PROPOSED] ORDER RE STAY OF
 DISCOVERY**

JOINT RECOMMENDATION AND [PROPOSED]
 ORDER RE STAY OF DISCOVERY
 MASTER FILE NO. M:07-1827-SI, MDL NO. 1827

JOINT RECOMMENDATION

The U.S. Department of Justice, the Interim Co-Lead Counsel for the Direct Purchaser Plaintiffs and the Proposed Class, one Interim Co-Lead Counsel for the Indirect Purchaser Plaintiffs and the Proposed Class, and the Defendants¹ make this joint recommendation to the Court to modify the September 25, 2007 Order Granting the United States' Motion to Stay Discovery, and request that the Court adopt the attached [Proposed] Order.

DATED: May 21, 2008

UNITED STATES DEPARTMENT OF JUSTICE

By: /s/ Niall E. Lynch

NIALL E. LYNCH

Intervenor United States

DATED: May 21, 2008

PEARSON, SIMON, SOTER, WARSHAW & PENNY, LLP

By: /s/ Bruce L. Simon

BRUCE L. SIMON

Interim Co-Lead Counsel for the Direct Purchaser Plaintiffs and the Proposed Class

DATED: May 21, 2008

LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP

By: /s/ Richard M. Heimann

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Interim Co-Lead Counsel for the Direct Purchaser Plaintiffs and the Proposed Class

DATED: May 21, 2008

ZELLE HOFMANN VOELBEL MASON & GETTE LLP

By: /s/ Francis O. Scarpulla

FRANCIS O. SCARPULLA

Interim Co-Lead Counsel for the Indirect Purchaser Plaintiffs and the Proposed Class

¹ This Joint Recommendation reflects the consensus view of the Defendants and Plaintiffs, except for one Interim Co-Lead Counsel for the Indirect Purchaser Plaintiffs who objects to it in its entirety.

Case M:07-cv-017-SI Document 628 Filed 05/21/08 Page 3 of 6

1 DATED: May 21, 2008

PILLSBURY WINTHROP SHAW PITTMAN
LLP

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3
4 By: /s/ Albert J. Boro, Jr.
ALBERT J. BORO, JR.
5 *Defendants' Liaison Counsel*

6 Pursuant to General Order 45, Part X-B, the filer attests that concurrence in the filing of
7 this document has been obtained from Niall E. Lynch, Bruce L. Simon, Richard M. Heimann, and
8 Francis O. Scarpulla.
9

1 PROPOSED ORDER

2

3 The Order of September 25, 2007 (the "Stay Order"), Granting the United States'

4 Motion to Stay Discovery is modified as follows:

5 1. Upon entry of this Stipulation as an order of the Court, the Stay Order shall no

6 longer prohibit discovery in this case, except as set forth below:

7 2. Until January 9, 2009, the Stay Order shall continue to prohibit discovery seeking

8 evidence of an alleged conspiracy in violation of Section 1 of the Sherman Act involving TFT-

9 LCD panels and finished products containing TFT-LCD panels, including discovery that refers,

10 reflects or relates to any understandings, agreements, contacts, meetings, or communications by

11 and between defendants. The Stay Order does not prohibit third party discovery; discovery

12 concerning the purchase or sale of TFT-LCD panels and finished products containing TFT-LCD

13 panels by Defendants to third parties, one another, or by or between a Defendants' subsidiaries,

14 joint ventures, or affiliates; discovery concerning the purchase or sale of TFT-LCD panels and

15 finished products containing TFT-LCD panels by or to putative class members; and discovery

16 concerning a Defendants' (or its subsidiaries, joint ventures, or affiliates') production capacity,

17 capacity utilization, production costs, inventory levels, sales volumes, product lines, profitability,

18 competitive position, market share, sales terms and conditions, costs, prices, shipments,

19 customers, or distributors, to the extent consistent with the first sentence of this paragraph. By

20 way of example and not limitation, the Stay Order as modified herein would not prohibit the

21 production of evidence in discovery relating to a sales agreement between two defendants for

22 TFT-LCD panels, but would prohibit the production of evidence in discovery concerning

23 communications between the same two defendants that relate to an alleged violation of Section 1

24 of the Sherman Act, even if such communications occur in the context of the discoverable sales

25 agreement between those defendants. (The reference to products containing TFT-LCD panels

26 herein is not intended to have any bearing on the parties' pending dispute as to whether discovery

27 concerning such products should otherwise be permitted.)

28 3. The Stay Order shall continue to prohibit all discovery, including without

1 limitation, document requests, interrogatories, requests for admissions, or depositions that refer,
2 reflect or relate to any party's or witness' communications with the United States or with the
3 grand jury (including, but not limited to, the fact or the existence of such communications),
4 relating to the grand jury proceedings concerning the TFT-LCD industry, except as provided for
5 in Paragraph 5 or by order of the Court upon good cause shown and consistent with governing
6 law.

7 4. Notwithstanding the foregoing, the fact that information or a document was
8 communicated to the United States or the grand jury during the course of grand jury proceedings
9 does not make the information or document non-discoverable from defendants.

10 5. On January 9, 2009, each served defendant who has appeared in this case and
11 produced documents to the grand jury shall produce to the other parties (to extent they or their
12 claims have not been dismissed) all documents produced to the grand jury without a discovery
13 request. Every 90 days thereafter, each served defendant who has appeared in this case and
14 produced documents to the grand jury shall produce to the other parties (to extent they or their
15 claims have not been dismissed), on a rolling basis, all documents produced to the grand jury
16 during the preceding 90 days. Notwithstanding the foregoing, (i) with respect to documents
17 seized pursuant to a search warrant or documents produced in response to grand jury subpoenas
18 served after the date of this Stipulation, nothing in this Stipulation and Order shall prevent any
19 defendant from objecting to production on appropriate grounds under the Federal Rules of Civil
20 Procedure; (ii) defendants reserve their rights to claim that documents are protected from
21 disclosure by the attorney-client privilege, attorney work product doctrine, or similar privileges or
22 protections, and shall list any such documents and the basis for the claim on a privilege log to be
23 produced on the same date as the production from which they were withheld; and (iii) to the
24 extent documents contain private information concerning an individual, the production of which
25 would violate an individual's reasonable expectations of privacy, a defendant shall list any such
26 documents and the basis for the claim on a privacy log to be produced on the same date as the
27 production from which they were withheld, and shall make such document available for review
28 by counsel for the other parties in the office of defendant's counsel or at a mutually agreeable

Case M:07-cv-0 27-SI Document 628 Filed 05/2 2008 Page 6 of 6

1 location in order to resolve such privacy claims.

2 6. The Stay Order does not prohibit class certification discovery prior to January 9,
3 2009, except as prohibited by the other terms of this stipulation.

4 7. The Stay Order does not prohibit the service of interrogatories, requests for
5 admissions, requests for production of documents, and deposition notices; except to the extent
6 that such discovery requires the production of discovery which is stayed hereunder, substantive
7 responses shall not be produced before January 9, 2009. However, the Stay Order does not
8 prohibit formal responses to such discovery or the resolution of the Parties' objections to such
9 discovery pursuant to the discovery dispute resolution procedures already adopted by the Court,
10 so as to minimize any delay in discovery caused by the Stay Order. All parties retain all rights
11 under the Federal Rules of Civil Procedure and all other applicable rules and laws.

12 8. All formal discovery requests shall be served on the U.S. Department of Justice
13 ("DOJ"). The DOJ and any party may object to discovery on the basis that the requested
14 discovery seeks information or documents prohibited under this stipulation. Any such objections
15 shall be subject to the discovery dispute resolution procedures already adopted by the Court.

16 9. All parties and the United States reserve their rights with respect to discovery
17 conducted after January 9, 2009. However, any party or the United States can request a
18 modification of the discovery permitted hereunder upon a showing of good cause.

19
20 SO ORDERED.

21 DATED: 5/27/08



22 The Honorable Susan Illston
23 United States District Court Judge